

Case No.: CV-2103035

Dept. No.: 1

IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WHITE PINE

BAKER RANCHES, INC., a Nevada
corporation, DAVID JOHN ELDRIDGE AND
RUTH ELDRIDGE, as Co-Trustees of the
DAVID JOHN ELDRIDGE AND RUTH
ELDRIDGE FAMILY LIVING TRUST, dated
January 31, 2007; ZANE JORDAN; and
JUDEE SCHALEY,

Plaintiffs,

vs.

DEB HAALAND, in her official capacity as
Secretary of the United States Department of
the Interior, the UNITED STATES
DEPARTMENT OF THE INTERIOR,
SHAWN BENGE, in his official capacity as
Acting Director of the National Park Service,
the NATIONAL PARK SERVICE, and
JAMES WOOLSEY, in his official capacity as
Superintendent of the Great Basin National
Park,

Defendants.

SUMMONS

TO THE DEFENDANT: UNITED STATES DEPARTMENT OF THE INTERIOR

YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU WITHOUT
YOUR BEING HEARD UNLESS YOU RESPOND IN WRITING WITHIN 21
CALENDAR DAYS. READ THE INFORMATION BELOW VERY CAREFULLY.

1 A civil Complaint has been filed by the plaintiff(s) against you for the relief as set forth
2 in the Complaint.

- 3 1. If you intend to defend this lawsuit, you must do the following within 21 calendar
4 days after service of this summons, exclusive of the day of service:
- 5 a. File with the Clerk of the Court, whose address is shown below, a formal
6 written answer to the complaint, along with the appropriate filing fees, in
7 accordance with the rules of the Court, and;
 - 8 b. Serve a copy of your answer upon the attorney or plaintiff(s) whose name and
9 address is shown below.
- 10 2. Unless you respond, a default will be entered upon application of the plaintiff(s)
11 and this Court may enter a judgment against you for the relief demanded in the
12 complaint.

13 NICHOLE BALDWIN
14 CLERK OF THE COURT

15 By: Taylor Adams 3-19-21
16 County Clerk Date
17 Seventh Judicial District Court
18 White Pine County
19 801 Clark Street, Suite 4
20 Ely, NV 89301

21 Issued at the request of:

22 DEBBIE LEONARD (NSBN 8260)
23 LEONARD LAW, PC
24 955 S. Virginia St., Suite 220
25 Reno, Nevada 89502
26 Telephone: (775) 964-4656
27 Email: debbie@leonardlawpc.com
28

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Case No.: CV - 2103035
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NICHOLE BALDWIN
WHITE PINE COUNTY CLERK
BY: TA
DEPUTY

IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WHITE PINE

BAKER RANCHES, INC., a Nevada corporation, DAVID JOHN ELDRIDGE AND RUTH ELDRIDGE, as Co-Trustees of the DAVID JOHN ELDRIDGE AND RUTH ELDRIDGE FAMILY LIVING TRUST, dated January 31, 2007; ZANE JORDAN; and JUDEE SCHALEY,

COMPLAINT IN EQUITY
TO ENFORCE BAKER-LEHMAN
DECREE

Plaintiffs,

vs.

DEB HAALAND, in her official capacity as Secretary of the United States Department of the Interior, the UNITED STATES DEPARTMENT OF THE INTERIOR, SHAWN BENGE, in his official capacity as Acting Director of the National Park Service, the NATIONAL PARK SERVICE, and JAMES WOOLSEY, in his official capacity as Superintendent of the Great Basin National Park,

Defendants.

COMES NOW, Plaintiffs BAKER RANCHES, INC. ("Baker Ranches"), DAVID JOHN ELDRIDGE AND RUTH ELDRIDGE, as Co-Trustees of the DAVID JOHN ELDRIDGE AND RUTH ELDRIDGE FAMILY LIVING TRUST, dated January 31, 2007; ZANE JORDAN; and JUDEE SCHALEY (collectively, "Plaintiffs"), by and through their undersigned attorney, Debbie Leonard of Leonard Law, PC, states their complaint against the

1 United States Department of the Interior, the National Park Service, and the Great Basin
2 National Park as follows:

3 **PARTIES**

4 1. Plaintiff Baker Ranches, Inc. is a Nevada corporation that owns, holds,
5 maintains, and is the lawful successor in interest to water rights that were adjudicated and
6 decreed pursuant to the Findings of Fact, Conclusions of Law and Decree entered on October
7 16, 1934, as corrected nunc pro tunc on February 23, 1950, in Case No. 2874, *In the Matter of*
8 *the Determination of the Relative Rights in and to the Waters of Baker and Lehman Creeks*
9 *and Tributaries in the County of White Pine, State of Nevada* ("the Decree") to irrigate
10 farming and grazing lands in White Pine County, Nevada. Baker Ranches' principal place of
11 business is in White Pine County, Nevada.

12 2. Plaintiffs David John Eldridge and Ruth Eldridge, as co-trustees of the David
13 John Eldridge and Ruth Eldridge Family Living Trust, dated January 31, 2007, are residents
14 of Baker, Nevada. The Eldridge Family Living Trust owns, holds, maintains, and is the lawful
15 successor in interest to water rights that were adjudicated and decreed pursuant to the Decree
16 to irrigate farming and grazing lands in White Pine County, Nevada.

17 3. Plaintiff Zane Jordan is a resident of Ely, Nevada. Mr. Jordan owns, holds,
18 maintains, and is the lawful successor in interest to water rights that were adjudicated and
19 decreed pursuant to the Decree to irrigate farming and grazing lands in White Pine County,
20 Nevada.

21 4. Plaintiff Judee Schaley is a resident of Ely, Nevada. Ms. Schaley owns, holds,
22 maintains, and is the lawful successor in interest to water rights that were adjudicated and
23 decreed pursuant to the Decree to irrigate farming and grazing lands in White Pine County,
24 Nevada.

25 5. Defendant Deb Haaland is the Secretary of the United States Department of the
26 Interior. As Secretary, she is responsible for the direction and supervision of all operations
27 and activities in the Department of the Interior, including those taken by the National Park
28 Service.

1 6. Defendant United States Department of the Interior is a Cabinet-level agency
2 of the U.S. government that manages some of America's natural and cultural resources,
3 including the Great Basin National Park ("the Park") and that claims to be the successor-in-
4 interest to certain water rights that were adjudicated and decreed pursuant to the Decree.

5 7. Defendant Shawn Bengé is the Acting Director of the National Park Service
6 and is sued in his official capacity. As Acting Director, Mr. Bengé is responsible for the
7 direction and supervision of all operations and activities of the National Park Service,
8 including those in the State of Nevada.

9 8. Defendant National Park Service ("NPS") is an agency of the United States
10 Department of the Interior charged with managing Great Basin National Park.

11 9. Defendant James Woolsey is the Superintendent of the Great Basin National
12 Park and is sued in his official capacity. As Superintendent, Mr. Woolsey is responsible for
13 the direction and supervision of all operations and activities in the Great Basin National Park.
14 In that capacity, Mr. Woolsey and his agents and employees are charged with complying with
15 the Decree.

16 JURISDICTION AND VENUE

17 10. Jurisdiction is proper in this Court pursuant to Nev. Const. art. 6, §6, the
18 Court's equitable jurisdiction to enforce its own decrees and NRS 533.450(1).

19 11. Defendants have waived sovereign immunity pursuant to 43 U.S.C. §666(a)
20 and by virtue of holding water rights adjudicated under the Decree.

21 12. Venue is proper in this Court because this Court entered the Decree and
22 maintains jurisdiction to enforce it, and the acts and events giving rise to this action occurred
23 in White Pine County, Nevada.

24 GENERAL ALLEGATIONS

25 13. The Decree adjudicated the respective rights to the waters of Baker and
26 Lehman Creeks and their tributaries (collectively, "the Creeks").

27 14. The Plaintiffs hold the following water rights under the Decree with the
28 following priority dates:

1 a. Plaintiff Baker Ranches, Inc.'s share of Proof of Appropriation No. 01066
2 is appurtenant to 1,751.87 acres and has a priority date between 1872 to
3 1904.

4 b. Plaintiff David John Eldridge and Ruth Eldridge Family Living Trust's
5 share of Proof of Appropriation No. 01066 is appurtenant to 8.8 acres and
6 has a priority date of 1872.

7 c. Plaintiffs Zane Jordan's and Judee Shaley's share of Proof of
8 Appropriation No. 01066 is appurtenant to 7.13 acres and has a priority
9 date of 1876.

10 15. The National Park Service claims to be the successor-in-interest to two water
11 rights adjudicated under the Decree, Proofs of Appropriation Nos. 01065 and a portion of No.
12 01066. Proof of Appropriation No. 01065 is appurtenant to 7.5 acres and has a priority date of
13 1890. The National Park Service's share of Proof of Appropriation No. 01066 is appurtenant
14 to 25 acres and has a priority date of 1904.

15 16. What is now the Park was previously managed by the United States Forest
16 Service as part of the Nevada National Forest, which was withdrawn from the public domain
17 and created on February 10, 1909.

18 17. The Nevada National Forest was later incorporated into the Humboldt National
19 Forest on Oct. 1, 1957.

20 18. The Park was created on October 27, 1986 by Public Law 99-565 ("the GBNP
21 Enabling Act"), which indicated that withdrawal of lands for the Park was "subject to valid
22 existing rights."

23 19. The GBNP Enabling Act makes clear that creation of the Park "shall [not] be
24 construed to establish a new express or implied reservation to the United States of any water
25 or water-related right with respect to" the lands withdrawn for the Park, and "[n]o provision
26 of this Act shall be construed as authorizing the appropriation of water, except in accordance
27 with the substantive and procedural law of the State of Nevada." 16 U.S.C. §410mm-1(h).

28 ///

1 20. The Decree provides, inter alia, the following:

2 That the Judgment and Decree to be hereinafter entered should provide that
3 each and every water user of the Baker and Lehman Creeks stream system and
4 its tributaries, and each of agents, attorneys, servants, employees, and their
5 respective successors in interest, and each and every person acting in aid or
6 assistance of said parties, or either or any of them, be perpetually enjoined and
7 restrained as follows, to-wit:

- 8 (a) From at any time diverting or using or preventing or obstructing the flow,
9 in whole or in part, in or along its natural channel, of any of the water or
10 said stream system, except to the extent and in the amount and in the
11 manner and at the time or times fixed by this Decree and allocated,
12 allowed, prescribed, and determined to such parties respectively, and as
13 may be allowed in the permits which have been or may hereafter be
14 granted by the State Engineer of the state of Nevada.
- 15 (b) From diverting from the natural channel and from using any of the said
16 water for irrigation or any other purpose in excess of the amount
17 specifically allotted to or for said party herein and fixed by this Decree, or
18 in excess of the specified allotment under such permit or permits so
19 heretofore granted or which may hereafter be granted by said State
20 Engineer.
- 21 (c) From diverting from the natural channel and from using any of the said
22 waters in any other manner or for any other purpose or purposes or upon
23 any other land or lands or in any other amount than as provided and
24 prescribed by the terms of this Decree or by any such permit so granted by
25 said State Engineer.
- 26 (d) From diverting from the natural channel and from using any of the said
27 water at any other time or times than as specified and provided by the
28 terms of this Decree or by any such permit so granted by the said State
29 Engineer.
- 30 (e) From in any manner meddling with, opening, closing, changing, injuring,
31 or interfering with any headgates, weirs, water-boxes, flumes, or
32 measuring devices, or either or any of them, placed, installed, established,
33 or approved by said State Engineer or by his authority or direction, unless
34 such act be done with the permission or authority of the water
35 commissioner or commissioners on said stream system during the period
36 of his regulation or control of said water, or, if not done during such
37 period of his control, then by virtue of the allowances, authority, terms,
38 and provisions of this Decree or by a permit so granted by said State
39 Engineer.

40 21. Baker and Lehman Creeks flow through the Park.

41 22. The point at which the Plaintiffs divert water from Baker and Lehman Creeks
42 is downstream of the Park boundary and outside the Park.

43 23. A Notice of Location of Water Right By Willard Burbank, recorded in the
44 official records of White Pine County in Book 34, pages 205-208 at the request of George W.

1 Baker, who is a predecessor in interest to the Plaintiffs, identifies the original point of
2 diversion from Baker Creek located within the boundaries of what is now the Park and
3 indicates that it had been in use for 15 years, which would date it to 1872.

4 24. The place of use of the Plaintiffs' water rights is in White Pine County,
5 Nevada, outside the Park boundary.

6 25. The availability of water flows to satisfy Plaintiffs' decreed water rights
7 depends on the unobstructed, undiverted and unconsumed flow of water in the Creeks through
8 the Park.

9 26. Defendants operate campgrounds along Lehman Creek and Baker Creek for
10 which they have no water rights.

11 27. Defendants are diverting and using tributary water from Baker and Lehman
12 Creeks at the campgrounds without a water right, thereby violating the Decree and interfering
13 with Plaintiffs' exercise of their senior decreed rights.

14 28. There are caves, cracks and sinks along the channel of Baker Creek.

15 29. Historically, Plaintiffs' predecessors have entered into the Baker Creek
16 channel, using machinery and by hand, to build diversions, clear channel obstructions and to
17 move rocks and debris to block the openings of the caves, cracks and sinks to prevent the loss
18 of their decreed water rights.

19 30. Under Nevada law and the Decree, Plaintiffs have the right to the unobstructed
20 flow of their decreed water rights and the salvage and capture of their decreed water rights
21 before the water is lost into caves, cracks and sinks.

22 31. Defendants have allowed rocks, debris and vegetation to accumulate and have
23 placed debris and obstructions in the Creeks that obstruct the free flow of water to Plaintiffs'
24 points of diversion and cause Plaintiffs' water rights to be diverted, consumed, and lost into
25 side channels, caves, cracks and sinks.

26 32. Because of Defendants' acts and omissions, in 2012 and 2020, all of Baker
27 Creek's flow was being lost into a sink along Baker Creek, such that Plaintiffs were deprived
28

1 of their decreed rights. No usable flow has existed in Baker Creek downstream from the sink
2 to the confluence of Lehman Creek since 2020.

3 33. Defendants have prevented Plaintiffs – with threat of law enforcement action –
4 from entering into the Park to remove obstructions to flow and to prevent their decreed water
5 rights from being lost into caves, cracks and sinks.

6 34. Defendants have not moved rocks, debris and other obstructions to the flow so
7 that all of Plaintiffs' decreed rights reach their points of diversion.

8 35. By preventing Plaintiffs from exercising the full amount of their decreed
9 rights, Defendants seek to unlawfully augment water resources within the Park without a right
10 to do so.

11 36. Plaintiffs are injured by the actions and inactions of Defendants and
12 Defendants' threat of law enforcement action that prevents Plaintiffs from entering onto Park
13 property to preserve and protect the flow to satisfy their senior decreed rights.

14 37. Defendant NPS has engaged in decades of unnatural fire suppression activities,
15 resulting in the proliferation of vegetation and debris in the Creeks that did not exist at the
16 time Plaintiffs' predecessors established their decreed rights.

17 38. Riparian areas along the Creeks are now choked with vegetation and debris
18 that did not exist at the time Plaintiffs established their decreed rights.

19 39. The vegetation and debris are consuming and evapotranspiring the water that is
20 decreed to Plaintiffs and obstructing the flow of water to Plaintiffs' points of diversion.

21 40. The vegetation and debris dam and cause water to leave the natural channels of
22 Baker and Lehman Creeks, which in turn causes evaporation and loss of Plaintiffs' decreed
23 rights and prevents the full amount of Plaintiffs' decreed rights from reaching their points of
24 diversion.

25 41. Defendants have planted vegetation along a newly braided channel in Lehman
26 Creek, thereby consuming Plaintiffs' senior decreed rights and preventing Plaintiffs' decreed
27 rights from reaching Plaintiffs' points of diversion.
28

FIRST CLAIM FOR RELIEF
(Enforcement of Decree)

42. Plaintiffs repeat and incorporate the allegations contained in the preceding paragraphs as if set forth verbatim herein.

43. The Court retains equity jurisdiction to enforce the terms of the Decree.

44. Through the acts and omissions described herein, Defendants are interfering with and preventing Plaintiffs from exercising their decreed rights.

45. Through the acts and omissions described herein, Defendants are consuming water that belongs to others, in violation of the Decree.

46. Through the acts and omissions described herein, Defendants are using water that belongs to others for the benefit of Park resources for which Defendants lack any water rights.

47. Through the acts and omissions described herein, Defendants are consuming water in excess of their decreed rights.

48. Plaintiffs have been and continue to be irreparably injured by the acts of Defendants.

49. Plaintiffs' injuries cannot be satisfied with compensatory damages.

50. In order to prevent Defendants from continuing to violate the Decree, the Court must exercise its equitable powers to enjoin Defendants from interfering with Plaintiffs' exercise of their senior decreed rights and to hold Defendants in contempt of Court for their violations of the Decree.

WHEREFORE, Plaintiffs pray for relief as follows:

1. That this Court enter an Order enjoining Defendants, under penalty of contempt, as follows:

- a. Defendants shall refrain from diverting and using tributary water from Baker and Lehman Creeks at the campgrounds.
- b. Defendants shall refrain from interfering with Plaintiffs' efforts to remove obstructions and debris from the Baker and Lehman Creek channels; to

1 move rocks and debris to block caves, sinks and seeps; to prevent
2 braiding; to redirect water back into the channel; and to otherwise
3 maximize the flows of Baker and Lehman Creeks from their sources to
4 Plaintiffs' points of diversion, pursuant to the law of prior appropriation.
5 *See Tonkin v. Winzell*, 27 Nev. 88, 73 P. 593, 595 (1903); *Ennor v. Raine*,
6 27 Nev. 178, 74 P. 1, 2 (1903); *Buckers Irr., Mill. & Imp. Co. v. Farmers'*
7 *Indep. Ditch Co.*, 72 P. 49, 50 (Colo. 1902).

- 8 c. Alternatively, Defendants shall remove obstructions and debris from the
9 Baker and Lehman Creek channels; move rocks and debris to block caves,
10 sinks and seeps; to prevent braiding and the formation of side channels
11 due to obstructions in the channel; redirect water back into the channel;
12 and otherwise ensure the unobstructed and undiverted flows of Baker and
13 Lehman Creeks from their sources to Plaintiffs' points of diversion.
- 14 d. Defendants shall refrain from threatening Plaintiffs with law enforcement
15 action or criminal prosecution, or prosecuting Plaintiffs for Plaintiffs'
16 actions to protect and preserve Plaintiffs' decreed rights.
- 17 e. Defendants shall refrain from diverting water in any manner other than as
18 allowed under the Decree or in excess of their decreed rights.
- 19 f. Defendants shall refrain from planting vegetation in the riparian corridors
20 of Baker and Lehman Creeks or otherwise consuming tributary water.
- 21 g. Defendants shall refrain from felling trees or other vegetation in the
22 channels of Baker and Lehman Creeks.

23 2. For costs and fees to be awarded to Plaintiffs due to having to bring this action
24 to enforce the Decree.

25 3. Such other and further relief as the Court may deem proper.

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AFFIRMATION

The undersigned does hereby affirm that the preceding document does not contain the Social Security number of any person.

DATED: March 19, 2021

LEONARD LAW, PC



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